

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALFONSO HERNANDEZ,

Plaintiff,

vs.

NO. CIV-14-964-KBM-SCY

CITY OF ALBUQUERQUE,
a Municipal Entity Organized Under
the Laws of the State of New Mexico
and its subsidiaries the Albuquerque
Police Department,

ANDY FITZGERALD,
in his individual capacity as a security officer
employed by the Albuquerque Transit Dept.,
Security Div.,

AKEEM POWDRELL,
in his individual capacity as a security officer
employed by the Albuquerque Transit Dept.,
Security Div.

DANIEL GALVAN,
in his individual capacity as an officer
employed by the Albuquerque Police Dept.,

AMY MARKWICK,
in her individual capacity as an officer
employed by the Albuquerque Police Dept.

Defendants.

**AKEEM POWDRELL'S ANSWER TO COMPLAINT FOR VIOLATIONS
OF THE TORT CLAIMS ACT AND DEPRIVATION OF CIVIL RIGHTS**

Defendant, Akeem Powdrell, answers Plaintiff's Complaint for Violations of the Tort Claims Act and Deprivation of Civil Rights (the "Complaint"), as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies same.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and therefore denies same.

3. In response to Paragraph 3 of the Complaint, Defendant admits that he is a resident of Albuquerque, Bernalillo County, New Mexico and that at all times material to the Complaint he was acting in the course and scope of his employment and under color of law. Defendant denies the remaining allegation contained in Paragraph 3 of the Complaint.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 4 of the Complaint and therefore denies the same. In response to the second sentence in Paragraph 4 of the Complaint Defendant admits that at all times relevant Daniel Galvan was a law enforcement officer and denies the remaining allegations in that sentence Defendant admits the allegations contained in the last sentence of Paragraph 4 of the Complaint.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 5 of the Complaint and therefore denies the same. In response to the second sentence in Paragraph 5 of the Complaint Defendant admits that at all times relevant Amy Markwick was a law enforcement officer and denies the remaining allegations in that sentence Defendant admits the allegations contained in the last sentence of Paragraph 5 of the Complaint.

6. Defendant admits the allegations contained in the first two sentences of Paragraph 6 of the Complaint but denies the allegations contained in the last sentence of Paragraph 6.

7. Paragraph 7 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

10. Paragraph 10 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

11. Paragraph 11 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

12. Paragraph 12 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

13. Defendant admits the allegations contained in Paragraph 13 of the Complaint.

14. Defendant admits the allegations contained in Paragraph 14 following removal.

15. Defendant admits the allegations contained in Paragraph 15 of the Complaint following removal.

16. Defendant admits the allegations contained in Paragraph 16 of the Complaint following removal.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two lines of Paragraph 21 and denies the remaining allegations contained in Paragraph 21 of the Complaint.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. Paragraph 28 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations admits the allegations contained in Paragraph 30 of the Complaint.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint.

37. Paragraph 37 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

38. Paragraph 38 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint.

40. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint.

41. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint.

42. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint.

43. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint.

45. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint.

46. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

48. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint.

49. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51. Defendant admits the allegations contained in Paragraph 51 of the Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

63. Defendant denies the allegations contained in Paragraph 63 of the Complaint.

64. Paragraph 64 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

65. Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 66 and therefore deny same.

67. Defendant denies the allegations contained in Paragraph 67 of the Complaint.

68. Defendant denies the allegations contained in Paragraph 68 of the Complaint.

69. Defendant denies the allegations contained in Paragraph 69 of the Complaint.

70. Defendant denies the allegations contained in Paragraph 70 of the Complaint.

71. Defendant admits the allegations contained in Paragraph 71 of the Complaint.

72. Defendant admits the allegations contained in Paragraph 72 of the Complaint.

73. Defendant denies the allegations contained in Paragraph 73 of the Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of the Complaint.

75. Paragraph 75 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

76. Paragraph 76 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

77. Defendant denies the allegations contained in Paragraph 77 of the Complaint.

78. Defendant admits the allegations contained in Paragraph 78 of the Complaint.

79. Defendant denies the allegations contained in Paragraph 79 of the Complaint.

80. Paragraph 80 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

81. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 81 of the Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Complaint.

83. Paragraph 83 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

84. Defendant denies the allegations contained in Paragraph 84 of the Complaint.

85. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 85 of the Complaint.

86. Defendant denies the allegations contained in Paragraph 86 of the Complaint.

87. Defendant denies the allegations contained in Paragraph 87 of the Complaint.

88. Defendant denies the allegations contained in Paragraph 88 of the Complaint.

89. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 89 of the Complaint.

90. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 90 of the Complaint.

91. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 91 of the Complaint.

92. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 92 of the Complaint.

93. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 93 of the Complaint.

94. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 94 of the Complaint.

95. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 95 of the Complaint.

96. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 96 of the Complaint.

97. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 97 of the Complaint.

98. In response to the allegations contained in Paragraph 98 of the Complaint, Defendant affirmatively states that the video evidence referred to therein speaks for itself.

99. Defendant denies the allegations contained in Paragraph 99 of the Complaint.

100. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 100 of the Complaint.

101. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 101 of the Complaint.

102. Paragraph 102 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

103. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 103 of the Complaint.

104. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 104 of the Complaint.

105. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 105 of the Complaint.

106. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 106 of the Complaint.

107. Defendant denies the allegations contained in Paragraph 107 of the Complaint.

108. Defendant denies the allegations contained in Paragraph 108 of the Complaint.

109. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 109 of the Complaint.

110. Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 110 of the Complaint.

111. Defendant admits the allegations contained in Paragraph 111 of the Complaint.

112. Defendant admits the allegations contained in Paragraph 112 of the Complaint.

113. Defendant admits the allegations contained in Paragraph 113 of the Complaint.

114. Defendant incorporates by reference its answers to Paragraphs 1 through 113 of the Complaint as if fully set forth herein.

115. Paragraph 114 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

116. Paragraph 115 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

117. Paragraph 116 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

118. Paragraph 117 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

119. Paragraph 118 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

120. Paragraph 119 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

121. Defendant denies the allegations contained in Paragraph 120 of the Complaint.

122. Defendant incorporates by reference its answers to Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

123. Count II, Paragraphs 121 through 127 of the Complaint is not directed toward the Defendant, and Defendant has no response to it. To the extent the allegations can be construed to be against Defendant, the allegations are denied.

124. Defendant incorporates by reference its answers to Paragraphs 1 through 127 of the Complaint as if fully set forth herein.

125. Defendant denies the allegations set forth in Paragraph 128 of the Complaint.

126. Defendant denies the allegations set forth in Paragraph 129 of the Complaint.

127. Defendant denies the allegations set forth in Paragraph 130 of the Complaint.

128. Defendant denies the allegations set forth in Paragraph 131 of the Complaint.

129. Defendant incorporates by reference its answers to Paragraphs 1 through 131 of the Complaint as if fully set forth herein.

130. Defendant denies the allegations set forth in Paragraph 132 of the Complaint.

131. Defendant denies the allegations set forth in Paragraph 133 of the Complaint.

132. Defendant denies the allegations set forth in Paragraph 134 of the Complaint.

133. Defendant denies the allegations set forth in Paragraph 135 of the Complaint.

134. Defendant incorporates by reference its answers to Paragraphs 1 through 135 of the Complaint as if fully set forth herein.

135. Defendant denies the allegations set forth in Paragraph 136 of the Complaint.

135. Defendant denies the allegations set forth in Paragraph 137 of the Complaint.

138. Defendant denies the allegations set forth in Paragraph 138 of the Complaint.

139. Defendant denies the allegations set forth in Paragraph 139 of the Complaint.

140. Defendant denies the allegations set forth in Paragraph 140 of the Complaint.

141. Defendant incorporates by reference its answers to Paragraphs 1 through 140 of the Complaint as if fully set forth herein.

142. Count IV, Paragraphs 141 through 153 of the Complaint, is not directed toward the Defendant, and Defendant has no response to it. To the extent the allegations can be construed to be against Defendant, the allegations are denied.

143. Defendant incorporates by reference its answers to Paragraphs 1 through 153 of the Complaint as if fully set forth herein.

144. Paragraph 154 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

145. Paragraph 155 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

146. Paragraph 156 of the Complaint calls for a legal conclusion and cannot be admitted or denied.

147. Defendant denies the allegations set forth in Paragraph 157 of the Complaint.

148. Defendant denies the allegations set forth in Paragraph 158 of the Complaint.

149. Defendant denies the factual allegations set forth in Paragraph 159 of the Complaint and states it also calls for legal conclusions that cannot be admitted or denied.

150. Defendant denies the allegations set forth in Paragraph 160 of the Complaint.

151. Defendant denies the allegations set forth in Paragraph 161 of the Complaint.

152. Defendant denies the allegations set forth in Paragraph 162 of the Complaint.

153. Defendant denies the allegations set forth in Paragraph 163 of the Complaint.

154. Defendant denies the allegations set forth in Paragraph 164 of the Complaint.

155. Defendant denies the allegations set forth in Paragraph 165 of the Complaint.

156. Defendant denies the allegations set forth in Paragraph 166 of the Complaint.

157. Defendant incorporates by reference its answers to Paragraphs 1 through 166 of the Complaint as if fully set forth herein.

158. Defendant denies the allegations set forth in Paragraph 167 of the Complaint.

159. Defendant denies the allegations set forth in Paragraph 168 of the Complaint.

160. Defendant denies the allegations set forth in Paragraph 169 of the Complaint.

161. Defendant denies the allegations set forth in Paragraph 170 of the Complaint.

162. Defendant denies the allegations set forth in Paragraph 171 of the Complaint.

163. Defendant denies the allegations set forth in Paragraph 172 of the Complaint.

164. Defendant denies the allegations set forth in Paragraph 173 of the Complaint.

165. Defendant denies the allegations set forth in Paragraph 174 of the Complaint.

166. Defendant incorporates by reference its answers to Paragraphs 1 through 174 of the Complaint as if fully set forth herein.

167. Count IX, Paragraphs 175 through 182 of the Complaint, is not directed toward the Defendant, and Defendant has no response to it. To the extent the allegations can be construed to be against Defendant, the allegations are denied.

168. Defendant incorporates by reference its answers to Paragraphs 1 through 182 of the Complaint as if fully set forth herein.

169. Count X, Paragraphs 183 through 195 of the Complaint, is not directed toward the Defendant, and Defendant has no response to it. To the extent the allegations can be construed to be against Defendant, the allegations are denied.

170. Defendant denies that Plaintiff is entitled to the relief as requested in the Requested Relief Section of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

To the extent the Complaint states, on its face, any valid federal claim(s) against this Defendant, which is denied, Defendants affirmatively state that his actions were objectively reasonable under the circumstances and were done in good faith. Defendant is entitled to qualified immunity.

THIRD AFFIRMATIVE DEFENSE

The Complaint against Defendant is barred by the doctrine of qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

The alleged conduct of Defendant does not rise to the level of a constitutional violation.

FIFTH AFFIRMATIVE DEFENSE

The actions of Defendant did not violate the U.S. Constitution or federal law and are not actionable under 42 U.S.C. § 1983.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff seeks remedies that are not available under 42 U.S.C § 1983.

SEVENTH AFFIRMATIVE DEFENSE

The actions of Defendant did not violate Plaintiff's due process rights.

EIGHTH AFFIRMATIVE DEFENSE

Defendant exercised due care in the execution or enforcement of the law as a transit officer.

NINTH AFFIRMATIVE DEFENSE

Defendant, at all times material to the allegations in the Complaint, acted in good faith, without malice, and within the scope of his lawful duties.

TENTH AFFIRMATIVE DEFENSE

The actions of Defendant, at all times material to the allegations made in the Complaint, were reasonable, proper and legal.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent the Complaint states, on its face, any valid federal claim(s) against this Defendant, which is denied, Defendant affirmatively states that he did not commit a clearly established constitutional violation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were due to an independent intervening cause rather than due to any fault on the part of the Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries or losses, if any, were proximately caused by the negligence, intentional misconduct or other fault of the Plaintiff and/or third person for whom Defendant is not liable.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to exercise ordinary care and such failure proximately caused the injury and damages caused by Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant is not a law enforcement officer for purposes of the waiver of immunity under the New Mexico Tort Claims Act.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent the Complaint states, on its face, any valid federal claim(s) against Defendant, which is denied, then Defendant affirmatively states that Plaintiff's claims do not provide a basis for a punitive damage award.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages, if such damages were in fact incurred.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff did not suffer any detriment or damages in any amount whatsoever due to the actions of Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant was, at all times mentioned in the Complaint, engaged in the performance of his regularly scheduled duties as a transit officer.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant complied with the requirements of the Fourth Amendment to the United States Constitution.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The force alleged to have been exerted by Defendant was reasonable under the circumstances.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant is not liable for any injury resulting from his acts or omissions, where the acts or omissions were the result of the exercise of the discretion vested in him as a transit officer.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's state law claims, if any, are subject to the provisions of the New Mexico Tort Claims Act and all of its limitations and immunities.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant did not batter Plaintiff.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant did not assault Plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant did not falsely imprison Plaintiff.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant did not falsely arrest Plaintiff

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant's immunity for the alleged state claims is not waived under the New Mexico Tort Claims Act.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The Plaintiff is not entitled to pre- or post-judgment interest from this Defendant under the facts of this case.

THIRTIETH AFFIRMATIVE DEFENSE

The Plaintiff is not entitled to punitive damages.

Defendant expressly reserves the right to amend his and/or to assert cross-claims, counter-claims, third-party claims and/or defenses and additional affirmative defenses he may have based upon further investigation and discovery which will be conducted in this case.

WHEREFORE, having fully answered and affirmatively defended, Defendant Powdrell respectfully requests an Order of this Court dismissing with prejudice the Complaint against him in its entirety, assessing Defendant's attorney's fees and costs to the Plaintiff, and for such other and further relief as the Court deems just and proper in the premises.

WIGGINS, WILLIAMS & WIGGINS
A Professional Corporation

By /s/ Patricia G. Williams
Patricia G. Williams
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I HEREBY CERTIFY that on the 6th day of November, 2014,
I filed the foregoing electronically through the CM/ECF system,
which caused all parties or counsel of record to be served by electronic
means, as more fully reflected on the Notice of Electronic Filing.

/s/ Patricia G. Williams

Patricia G. Williams

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